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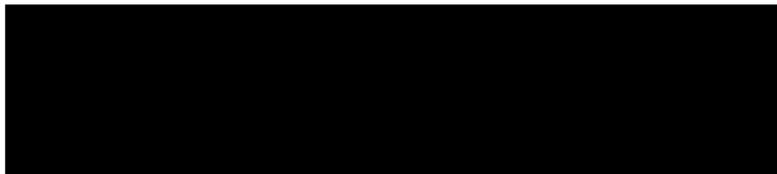
U.S. Department of Homeland Security
20 Massachusetts Ave. N.W., Rm. 3000
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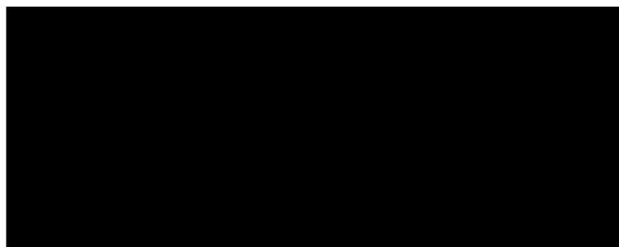
JUN 29 2007

FILE: EAC 07 163 52308 Office: VERMONT SERVICE CENTER Date:

IN RE: Petitioner: [Redacted]
Beneficiaries: [Redacted]

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(ii)(b) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(ii)(b)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

for Michael T. Kelly
Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was approved by the Director, Vermont Service Center, and certified to the Administrative Appeals Office (AAO) for review as required by 8 C.F.R. § 214.2(h)(9)(iii)(B)(2)(ii). The decision of the director will be affirmed and the petition will be approved for the period of established need.

The petitioner is engaged in the business of removing asbestos from building structures. It desires to employ the beneficiaries as asbestos removal workers for eight months. The Department of Labor (DOL) determined that a temporary certification by the Secretary of Labor could not be made.

The director determined that sufficient countervailing evidence has been submitted to show that qualified persons in the United States are not available, that the employment policies of the DOL have been observed and that the need for the services to be performed is temporary. The director's recommendation to approve the instant petition is now before the AAO for review.

The regulations at 8 C.F.R. § 214.2(h)(9)(iii)(B)(2) states in pertinent part that :

(ii) Approval. In any case where the director decides that approval of the H-2B petition is warranted despite the issuance of a notice by the Secretary of Labor . . . that certification cannot be made, the approval shall be certified by the director to the Commissioner pursuant to 8 C.F.R. § 103.4. . . If approved, the petition is valid for the period of established need not to exceed one year. . . .

The I-129, Petition for a Nonimmigrant Worker (Form I-129) indicates at Part 5, item 8 that the dates of intended employment are from April 1, 2007 until November 30, 2007. To substantiate its need for the intended dates of service, the petitioner provided a copy of its invoice summary –VA jobsites for the calendar year 2006. The invoice summary shows that in comparison with its latter business activity, the petitioner's earnings increased from May through a peak in August and then decreases monthly through November.

After review of the documentary evidence contained in the record, the petition will be approved for the period of established need. The AAO finds that the petitioner has provided sufficient evidence to establish that the need for the beneficiaries' services is from May 2007 through November 2007 and that the need is peakload and temporary. The Vermont Service Center will issue the appropriate approval notice.

ORDER: The decision of the director is affirmed. The nonimmigrant visa petition is approved for the period of established need from May 1, 2007 until November 30, 2007.